

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C.A. 16-56057

SKIDMORE ET AL.

*Michael Skidmore, Trustee for the
Randy Craig Wolfe Trust
Plaintiff-Appellant*

V.

LED ZEPPELIN *ET AL.*

Defendants-Appellees

**MOTION BY THE PLAINTIFF-APPELLANT SKIDMORE FOR LEAVE TO
TRANSMIT PHYSICAL AND DOCUMENTARY EXHIBITS — INCLUSIVE
OF AUDIO/VISUAL EXHIBITS — IN THE APPELLATE RECORD**

PURSUANT TO F.R.A.P., NINTH CIRCUIT RULE 27-14

(Music copyright infringement, on appeal from the final Order dated June 23, 2016 of the Honorable R. Gary Klausner, of the United States District Court for the Central District of California. The case was docketed in the Central District at 15-cv-03462)

FRANCIS ALEXANDER, LLC
Francis Malofiy, Esquire
Alfred Joseph Fluehr, Esquire
280 N. Providence Road | Suite 1
Media, PA 19063
T: (215) 500-1000
F: (215) 500-1005
Law Firm / Lawyer for Appellant Skidmore

Plaintiff-Appellant, Michael Skidmore, as Trustee for the Randy Craig Wolfe Trust (“Skidmore” or “Plaintiff-Appellant”) respectfully seeks leave of the Court to lodge physical and documentary exhibits, inclusive of audio/visual exhibits, in the appellate Record, pursuant to Federal Rule of Appellate Procedure, Ninth Circuit Rule 27-14.

Ninth Circuit Rule 27-14 permits a party to file said motion if that party asserts that review of an exhibit not currently available on the electronic district court docket is necessary to resolution of an issue on appeal. In accordance with Rule 27-14, Plaintiff-Appellant files this motion asking for leave to transmit to the Court a copy or replication of the exhibits listed below. In compliance with the Rule he is not including the listed exhibits with the motion for filing.

[the rest of page intentionally left blank]

TRIAL EXHIBITS

6A Led Zeppelin Performing Fresh Garbage (1/10/1969)
61A Taurus Deposit Copy Audio
98 Jimmy Page Interview (New Musical Express)
157 Last Page of ZigZag Interview with Jimmy Page
160 Full Jimmy Page Interview in ZigZag
160A AUDIO - ZigZag Interview with Jimmy Page
205A AUDIO - Spirit Fresh Garbage Performance (2/3/1970)
305 N. Cal. Folk Rock Festival Poster
313 Rock Concert is Real Groovy News Article (Rocky Mountain News)
314 Atlanta Pop Greatest Musical Fair Ever (The Hurricane, 7/11/1969)
316 Seattle Pop Festival Poster
318 Seattle Pop Festival Poster
319 Texas International Pop Festival Poster and Misc Paraphenalia
321 Robert Plant Crash Article
373 Actual Spirit Album
500-1 Chromatic Line
501-1 Prior Art Comparison – Minor Chromatic Line and Associate Chords
502-1 Harmony Chords
503-1 Harmony Comparison
506-1 Melody Comparison Chart – Creative and Memorable (AB BC CF#)
508-1 Lead Sheets
509-1 Arpeggios and Melodies
511-1 Pitch Inventory
535 Photo Andes/Plant
538 Gonzaga University Set List (12/30/1968)
544V Hanson Performing Stairway
525V Hanson Performing Taurus Deposit Copy
527V Taurus Deposit Copy Bass Clef
527X Comparison – Taurus Bass Clef Played with STH by Hanson
2058 Taurus Deposit Copy
2704 Taurus Deposit Copy indicating (AB BC CF#)
2705 Ferrara Report Exhibit – Chord Progression – 4 measures – Taurus and Stairway
2708 Stairway Deposit Copy
2951 Spirit Poster for Mothers Club (Sat. Jan. 31, 1970)
100158 “Led Zeppelin: Split-Group Product” (Richmond News-Leader, 6/7/1969)
100165A ZigZag Interview of Page Concerning Bron-Yr-Aur
100164A BBC Arms of Atlas Interview with Page, Plant, and Jones

AUDIO EXHIBITS

Audio Exhibit 6:

Live performance of Led Zeppelin playing Fresh Garbage 1-10-1969

AUDIO EXHIBITS - COMPARISON AUDIO

Audio Exhibit 7:

Stairway to Heaven (0 seconds – 25 seconds)

Audio Exhibit 8:

Taurus (45 seconds – 1 minute, 13 seconds)

Audio Exhibit 9:

8 measures of Stairway from note 1 of the acoustic guitar, repeated multiple times

Audio Exhibit 10:

8 Measures of Taurus from note 1 of the acoustic guitar, repeated multiple times

Audio Exhibit 11:

8 measures of Stairway and Taurus played together from note 1 of the acoustic guitar, repeated multiple times

AUDIO EXHIBITS - RE-RECORDING OF STAIRWAY TO HEAVEN

Audio Exhibit 12:	Acoustic Guitar
Audio Exhibit 13:	Bass
Audio Exhibit 14:	Drums
Audio Exhibit 15:	Electric 12 Strings
Audio Exhibit 16:	Electric Piano
Audio Exhibit 17:	End Guitar
Audio Exhibit 18:	Les Pauls
Audio Exhibit 19:	Recorders
Audio Exhibit 20:	Slide
Audio Exhibit 21:	Solo

AUDIO EXHIBITS - RE-RECORDING OF TAURUS

Audio Exhibit 22:	Acoustic Guitar
Audio Exhibit 23:	Cello 1
Audio Exhibit 24:	Cello 2
Audio Exhibit 25:	Cymbal
Audio Exhibit 26:	Flute
Audio Exhibit 27:	Harpsichord
Audio Exhibit 28:	String Bass
Audio Exhibit 29:	Viola
Audio Exhibit 30:	Violins

AUDIO EXHIBITS - ALEXANDER STEWART

Audio Exhibit 31: (Previously: Audio Exhibit A)

“Stairway to Heaven” (album)

Audio Exhibit 32: (Previously: Audio Exhibit B)
“Taurus” (album)

Audio Exhibit 33: (Previously: Audio Exhibit E)
Taurus Live at Ash Grove (7/10/1967)

Audio Exhibit 34: (Previously: Audio Exhibit C)
Taurus Live at Ash Grove (7/31/1967)

Audio Exhibit 35: (Previously: Audio Exhibit D)
Taurus Live at Ash Grove (8/8/1967)

Audio Exhibit 36: (Previously: Audio Exhibit H)
Taurus Demo Recording (8/1967)

Audio Exhibit 37: (Previously: Audio Exhibit F)
Taurus Live at Kaleidoscope (4/5/1968)

Audio Exhibit 38: (Previously: Audio Exhibit G)
Taurus Live at The Time Coast

Audio Exhibit 39: (Previously: Audio Exhibit H)
Taurus Live at Acoustic (1996)

Audio Exhibit 40: (Previously: Audio Exhibit J)
Combination – Acoustic Taurus Synced to STH SR – Part A, played over Master SR of STH

Audio Exhibit 41: (Previously: Audio Exhibit K)
Acoustic Taurus Synced to Master SR of STH – Part A

Audio Exhibit 42: (Previously: Audio Exhibit L)
Stairway Acoustic – Part A:

Audio Exhibit 43: (Previously: Audio Exhibit M)
Taurus Acoustic – Part A:

Audio Exhibit 44: (Previously: Audio Exhibit N)
Combination – Acoustic Taurus Synced to Master SR of STH (Part A), played over Acoustic Stairway (Part A)

AUDIO EXHIBITS – REBUTTAL OF MATHES

Audio Exhibit 45: **Mathes Audio Exhibit Tempo Matched - Stairway**

Audio Exhibit 46:

Mathes Audio Exhibit Tempo Matched - Taurus

Audio Exhibit 47:

Mathes Audio Exhibit Tempo Matched - STH & Taurus

Many of the Trial Exhibits are necessary it is believed they may help this Court better understand Plaintiff-Appellant's sound recording/deposit copy argument. A few of the Trial Exhibits are to address access and the inverse-ratio argument. The Newspaper Article regarding Robert Plant's accident and some of the additional access exhibits are for the time limits argument.

Please note that the Plaintiff-Appellant lodged a copy of the listed Audio Exhibits with the District Court as part of summary judgment proceedings. See Notice of Manual Filing (Excerpt 2397) and Notice of Lodging (Excerpt 2311 – 2396).

For the foregoing reasons, Plaintiff-Appellant's motion should be granted.

Pursuant to the Circuit Advisory Committee Note to Rule 27-1, counsel for the Plaintiff-Appellant informed Appellees' counsel of its intent to file this motion on March 15, 2017. Counsel for Appellees' responded that subject to receiving and reviewing Plaintiff-Appellant's motion and service copies of the physical audio exhibits that is sought to have transferred to the Court, that Appellees' do not expect to object, but in the meantime are reserving all rights.

Respectfully submitted,

FRANCIS ALEXANDER, LLC

/s/ Francis Malofiy

Francis Malofiy, Esquire

Alfred Joseph Fluehr, Esquire

280 N. Providence Rd. | Suite 1

Media, PA 19063

T: (215) 500-1000

F: (215) 500-1005

E: francis@francisalexander.com

Law Firm / Lawyers for Appellant Skidmore

/d/ March 15, 2017

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPELLANT'S OPENING BRIEF and EXCERPTS OF THE RECORD have been served upon all counsel of record via electronic filing:

Helene Freeman, Esquire
666 Fifth Avenue
New York, NY 10103-0084
T: (212) 841-0547

F: (212) 262-5152

E: hfreeman@phillipsnizer.com

Attorneys for Defendants James Patrick Page, Robert Anthony Plant, and John Paul Jones (collectively with John Bonham (Deceased), professionally known as Led Zeppelin)

Peter J. Anderson, Esquire
100 Wilshire Blvd. | Suite 2010
Santa Monica, CA 90401
T:(310) 260-6030

F: (310) 260-6040

E: pja@pjanderson.com

Attorney for Defendants Super Hype Publishing, Inc., Warner Music Group Corp., Warner/Chappell Music, Inc., Atlantic Recording Corporation, and Rhino Entertainment Company

Respectfully submitted,

FRANCIS ALEXANDER, LLC

/s/ Francis Malofiy

Francis Malofiy, Esquire

Alfred Joseph Fluehr, Esquire

280 N. Providence Rd. | Suite 1

Media, PA 19063

T: (215) 500-1000

F: (215) 500-1005

E: francis@francisalexander.com

Law Firm / Lawyers for Appellant Skidmore

/d/ March 15, 2017